Adult Protection Act

Discussion Paper

September 2004

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Purpose of Act

2 The purpose of this Act is to provide a means whereby adults who lack the ability to care and fend adequately for themselves can be protected from abuse and neglect by providing them with access to services which will enhance their ability to care and fend for themselves or which will protect them from abuse or neglect.

Interpretation

3 In this Act,

(a) "adult" means a person who is or is apparently sixteen years of age or older;

(b) "adult in need of protection" means an adult who, in the premises where he resides,

(i) is a victim of physical abuse, sexual abuse, mental cruelty or a combination thereof, is incapable of protecting himself therefrom by reason of physical disability or mental infirmity, and refuses, delays or is unable to make provision for his protection therefrom, or

(ii) is not receiving adequate care and attention, is incapable of caring adequately for himself by reason of physical disability or mental infirmity, and refuses, delays or is unable to make provision for his adequate care and attention;

Nova Scotia's *Adult Protection Act*, in its entirety, can be viewed at *www.gov.ns.ca/legi/legc*, under consolidated public statutes.

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Introduction

Notes

In recent years, the issue of abuse and neglect among senior citizens and the disabled has gained the attention of the Canadian public. Numerous conferences have been held at every level of government to address this problem. Seniors' and disabled organizations are actively involved and are making recommendations to government on best approaches. Additionally, the *Adult Protection Act* was subject to extensive comment in the 1995 Harbison Report[1] entitled *Mistreating Elderly People: Questioning the Legal Response to Elder Abuse and Neglect*.

The Nova Scotia *Adult Protection Act*, enacted in 1985, was administered by the Department of Community Services until March 31, 2000, when responsibility for its administration was transferred to the Minister of Health by Order in Council.

Since the *Adult Protection Act* came into being, much has changed in the way in which it is administered and services are delivered. Originally, the primary role of adult protection was to serve adults who were living at home and were victims of abuse or neglect by a caregiver. Recent figures illustrate that the majority of adults who receive services under adult protection are experiencing self-neglect and not abuse and neglect by others.

According to those statistics, approximately 1300 new referrals that fall within the parameters of the adult protection legislation are received each year, and approximately 75 per cent of those referrals involve self-neglect, with the remainder being caregiver neglect or abuse. Although the act applies to persons who are 16 years of age and older, approximately 75 per cent of persons assisted under the act are seniors. With an increasingly aging population, the number of adults requiring long-term interventions is likely to increase.

In addition, there has been a change from the original intention that the act would provide short-term remedies until long-term solutions were put in place. The structure of the act reflects this idea that interventions would be short term. The act currently requires a return to court every six months for a review of an order deeming an adult to be in "need of protection."

1. Joan Harbison et al. *Mistreating Elderly People: Questioning the Legal Response to Elder Abuse and Neglect* (Halifax: Dalhousie University Health Law Institute, 1995).

Notes

Adult protection stakeholders, including the Senior Citizens' Secretariat, Disabled Persons Commission, Canadian Pensioners Concerned, physicians, the judiciary, and others, have also recommended changes to current adult protection legislation.

The Department of Health has completed a review of adult protection literature and similar legislation across Canada. The four Atlantic provinces have stand-alone adult protection legislation while several other jurisdictions utilize existing adult guardianship legislation to deal with situations where an adult who is unable to manage their own affairs is suspected of being abused or neglected.

Feedback Requested

The Department of Health is seeking your feedback regarding possible changes to *Nova Scotia's Adult Protection Act*.

The department has prepared this discussion paper as background information about the *Adult Protection Act* and as a means of identifying some of the main issues that require legislative and policy decisions.

Each topic is described and is followed by a question or series of questions. A response booklet is also enclosed for your convenience.

Your comments and suggestions are important and will be reviewed by the Department of Health and used to help improve adult protection legislation.

The deadline for submissions is **October 15, 2004.**

Responses should be forwarded to the department:

By mail: Provincial Coordinator
Adult Protection Services
Continuing Care Branch
Department of Health
P. O. Box 488, Halifax, Nova Scotia B3J 2R8

By fax: (902) 424-0558

By e-mail: *apact@gov.ns.ca*

The Discussion Paper and Response Booklet can also be accessed at the Department of Health's website at <www.gov.ns.ca/health>.

Guiding Principles

Notes

Guiding principles assist with the interpretation of the provisions of legislation. Guiding principles will better enable the Minister of Health, department staff, and the courts to make decisions that balance freedom of choice and personal autonomy with the public interest value of ensuring that vulnerable adults in society are protected.

Currently, the Nova Scotia *Adult Protection Act*, although it does not have guiding principles, does provide a purpose clause in Section 2 as follows:

> to provide a means whereby adults who lack the ability to care and fend adequately for themselves can be protected from abuse and neglect by providing them with access to services which will enhance their ability to care and fend for themselves or which will protect them from abuse or neglect,

and the overriding principle clause found in Section 12:

> "the welfare of the adult in need of protection is the paramount consideration."

By including guiding principles in legislation, the government may provide clear, expressly stated policy direction. The Department of Health recommends that the following guiding principles be included in the new *Adult Protection Act*:

- Adults are entitled to be presumed competent and capable of making decisions for themselves.
- Society has an obligation to afford its members, regardless of individual abilities or conditions, the opportunity to have security and the necessities of life.
- All adults are entitled to live in the manner they wish and to accept or refuse support, assistance, or protection as long as they do not harm others, and they are capable of making decisions about those matters.

Notes

- All adults should receive the least restrictive form of support, assistance, or protection available when they are unable to care for themselves.
- Where possible, the wishes of an adult in an adult protection proceeding are to be taken into consideration; however, the paramount consideration should be the best interests of the person.
- All adults are entitled to equal services, regardless of their capacity to care or make decisions for themselves.

Questions

1. Do you agree that guiding principles should be included in the *Adult Protection Act*?
2. Do you agree with the recommended guiding principles ?
3. Are there other principles that you would like to see included?

Competency

Notes

Mental Competency

The *Adult Protection Act* seeks to assist adults who are subject to neglect and/or abuse and are unable to care and fend for themselves. To be deemed "an adult in need of protection," the adult must either be physically disabled or suffer from mental infirmity. Furthermore, under Section 9(3), the court, when making an order pursuant to the act, must consider mental competency as a factor:

9(3) Where the court finds, upon the hearing of the application, that a person is an adult in need of protection and either

a) is not **mentally competent** [emphasis added] to decide whether or not to accept the assistance of the Minister ...

However, the act does not provide guidance as to the definition to be used when determining mental infirmity or mental incompetence.

The *Adult Protection Act* is a form of guardianship legislation. Where an adult is found to be mentally incompetent and in need of protection, a court may make an order authorizing the Minister to provide the adult with services, including placement in a facility approved by the Minister. The court also has the authority to make a protective intervention order directed at any person who, in the opinion of the court, is a source of danger to the adult in need of protection.

The Act therefore operates in an all-or-nothing approach. Decisions regarding services or placement may be made for the adult; the court applies the principle that the welfare of the adult is the paramount consideration. Accordingly, the distinction between competency and incompetency may be critical for an adult being assessed for purposes of the *Adult Protection Act*. If the definition is too broad, individuals with some level of competency may be assessed as incompetent; however, an interpretation that is too narrow may mean that individuals who would otherwise require assistance are not helped. Ensuring a balance is difficult.

Notes

Gordon and Verdun-Jones[2] write:

> Clear and standardized definitions are vitally important both for effective comparative research and, more importantly, the development of intervention strategies, including adult protection or guardianship proceedings. Narrow definitions may result in a failure to assist or protect those in need. Broadly constructed definitions may inadvertently result in the commission of abuse to infringement of an adult's fundamental rights and freedoms by excessive or unnecessary interventions.

Many provinces have adopted a two-part test for defining mentally incompetent persons either in adult protection or guardianship legislation. The definition used in Newfoundland, New Brunswick, Ontario, and Prince Edward Island is as follows:

"Mentally incompetent person" means a person:

(i) in whom there is such a condition of arrested or incomplete development of mind, whether arising from inherent causes or induced by disease or injury, or

(ii) who is suffering from such a disorder of mind, that the person requires care, supervision and control for his or her protection.

Saskatchewan, in the *Dependent Adults Act*, permits the appointment of a personal guardian in circumstances where:

a) an adult, whose ability to receive and evaluate information effectively or to communicate decisions is impaired to such an extent that the person lacks the capacity:

   (i) to care for himself or herself; or

   (ii) to make reasonable judgements with respect to management relating to his or her person;

2. Robert M. Gordon and Simon Verdun-Jones, *Adult Guardianship Law in Canada* (Toronto: Carswell, 1992), p. 2-2.

The first definition of incompetence appears to have a broad scope while the second one speaks more to specific abilities of the individual. It addresses issues of judgment and decision-making ability—vital concepts for adult protection purposes. Accordingly, the department is suggesting that a definition similar to the one used in Saskatchewan (*Dependent Adults Act*) be included in the *Adult Protection Act* in Nova Scotia.

Notes

Questions

4. Do you agree with the suggestion of the department to adopt the Saskatchewan definition of mental incompetence?

5. Is there some other definition of mental incompetence that you would like to suggest?

Notes

Assessing Competency

The Nova Scotia *Adult Protection Act* provides no standards for assessment of competency.

The current practice under the *Adult Protection Act* is to obtain a medical assessment from a psychiatrist or medical practitioner. There is no requirement, either in practice, policy, or legislation, that the assessment be done by a psychiatrist. Furthermore, there is no requirement that the assessment be carried out by an independent, objective assessor. Given the seriousness of the outcome of adult protection proceedings, and to protect to the fullest extent possible the rights of the adult, an assessment conducted by two medical practitioners, with one being a specialist, would be ideal.

Arguably, the lack of a standard test may lead to assessments that are influenced by the interests or bias of the assessor. A wish to have a patient receive services or to benefit from adult protection intervention may influence the outcome of an assessment.

The Law Reform Commission of Nova Scotia, in its *Discussion Paper on Adult Guardianship*, with respect to assessments, stated, "assessments must be multi-disciplinary, personalized and comprehensive."[3]

In its proposed draft legislation, the commission does not use the terms "competency" or " capacity." Rather, it sets out the criteria for an assessor's report.

10(1) An assessor will evaluate the abilities and circumstances of the adult subject to the application and state his or her opinion as to:

(a) the present and projected personal and health care needs of the adult;

(b) the ability of the adult, with or without help, to understand relevant information and to make and communicate decisions concerning:

(i) health care, nutrition, shelter, clothing, hygiene, and safety if the application concerns personal guardianship; and

3. Law Reform Commission of Nova Scotia, *Discussion Paper on Adult Guardianship* (Halifax: Law Reform Commission of Nova Scotia, 2002), p.xxxii.

(ii) financial affairs if the application concerns estate guardianship;

Notes

(c) whether the adult showed a preference for, or a rejection of, a particular guardian; and

(d) any other patient information.

Although much of what is contained in the commission's proposal would not necessarily be applicable in adult protection cases, it does provide guidance as to the potential breadth of an assessment.

The New Brunswick *Family Services Act* in Section 37.3(2) states that a medical report for a person who is the subject of an adult protection application to the court shall:

a) state that the medical practitioner personally examined the person who is the subject of the application and made careful inquiry into all of the facts necessary for the medical practitioner to form the opinion that the person is mentally incompetent;

b) set out the facts upon which the medical practitioner formed an opinion, distinguishing between the facts observed by the medical practitioner and the facts communicated to the medical practitioner by others; and

c) describe the nature or degree of the mental incompetence suffered by the person and set out the reasons upon which the medical practitioner relies in forming the opinion referred to in paragraph (b) and making the diagnosis.

The New Brunswick legislation makes reference in Section 37.3(3) to the parameters around the medical report as evidence:

> 37.3(3) An examination report signed and completed in accordance with this section is admissible in evidence and when introduced as evidence is proof, in the absence of evidence to the contrary, that the person is mentally incompetent, without proof of the signature or authority of the person appearing to have signed the examination report.

Notes

The department recommends the following:

- the inclusion of provisions similar to Section 37.3 of the New Brunswick legislation in the Nova Scotia *Adult Protection Act*
- the development of a standardized assessment tool for inclusion in regulations
- that two independent medical practitioners (one being a psychiatrist or a geriatric specialist) complete the adult protection assessment

Questions

6. Do you agree with the inclusion of a section in the *Adult Protection Act* similar to Section 37.3 of the New Brunswick Act?
7. Do you have an alternative wording to Section 37.3 of the New Brunswick Act that you would suggest for inclusion in the *Adult Protection Act*?
8. Should a standardized instrument or tool for assessing competency be included in regulations under the act?
9. Should two independent medical practitioners (one of whom is a psychiatrist or a geriatric specialist) be required to complete the adult protection assessment?

Models of Reporting: Mandatory and Voluntary

Notes

Canadian provinces have adopted a varied approach to reporting requirements in adult protection legislation, with some provinces opting for mandatory reporting and others opting for voluntary reporting.

The Nova Scotia *Adult Protection Act* requires that every person who has information indicating that "an adult is in need of protection" must report that information to the Minister. Newfoundland and Alberta also have mandatory reporting.

In Manitoba, reporting of abuse is mandatory only for persons in certain positions. Service providers, substitute decision makers, or committees who believe that the person for whom they are acting is or is likely to be abused or neglected must immediately report the information upon which this belief is based.

Adult protection legislation in Prince Edward Island, British Columbia, and New Brunswick contains voluntary reporting requirements. (For specific wording of reporting requirements in adult protection legislation, see Appendix A.)

Reporting requirements generally attract controversy and much discussion. There are strong arguments both for and against mandatory versus voluntary reporting. Gordon and Verdun-Jones outline thoroughly, arguments for and against each approach.[4]

4. Gordon and Verdun-Jones, *Adult Guardianship Law in Canada* (Toronto: Carswell, 1992), p. 2-47–2-51.

Notes

Arguments for Mandatory Reporting

- It facilitates early intervention and therefore reduces the amount of harm to the vulnerable adult, who otherwise would not be able to avail themselves of the assistance.
- Mandatory reporting requires a concomitant duty by the Minister to investigate and provide appropriate support services.
- It may act as a deterrent for neglect or abuse.
- It eliminates issues of uncertainty or reluctance to get involved. This is especially true for professionals who face moral and ethical dilemmas around breach of confidentiality.
- It is not a new reporting scheme. Public health and child abuse cases have always been part of a mandatory notification and reporting scheme, with few objections and generally positive outcomes.

Arguments against Mandatory Reporting

- Recognizing abuse or neglect or mental incompetence is difficult, and mandatory reporting may lead to premature and unwarranted referrals.
- This type of reporting leads to an ever-increasing "surveillance" or "big brother" society.
- It may lead to the creation of databases containing information about individuals who may be reported falsely by vindictive persons or for other reasons. The accused may never be proven to be guilty of the allegations, but the records, once created, remain in existence, generally for a number of years.
- It leads to an increase in unwarranted intervention.
- Mandatory reporting may lead to a decline in therapeutic relationships, as it overrides confidentiality provisions.
- It may lead to increased resources going into policing rather than support for adult protection services.
- Professional ethics already cover off reporting requirements, and mandatory reporting would simply be redundant.

Notes

In Nova Scotia, the experience with mandatory reporting suggests that most referrals come from health professionals or family and typically involve cases of self-neglect, due to some form of dementia. There are no reported instances of unwarranted or vindictive reporting.

Nova Scotia is recommending that the current provisions of the act be amended such that professionals are required to report suspected abuse or neglect, as these are the persons most likely to encounter or recognize problems, particularly as they relate to cognitive deficits. However, all other reporting will be voluntary.

For professionals under mandatory reporting and for those who voluntarily report, there will be a clause providing protection from liability or lawsuits where referrals to Adult Protection Services are made in good faith. The department is recommending that "professional" include the following:

- police
- clergy
- physicians
- nurses
- licensed practical nurses
- social workers
- psychologists
- teachers
- occupational therapists
- physiotherapists
- paramedics

The department also recommends that any agency or person providing health- related services or care for remuneration also be required to report.

Questions

10. Do you think that Nova Scotia should continue with mandatory reporting for all persons in the *Adult Protection Act*?

11. (a) Do you agree with the recommendation for mandatory reporting by professionals and voluntary reporting for the rest of society?

    (b) If reporting for professionals is mandatory, who should be included in the list of professionals? (E.g., police, clergy, physicians, nurses, social workers, psychologists)

Notes

Services

Provision of Services

When an adult is in need of protection, Section 7 of the *Adult Protection Act* specifies "... the Minister shall assist the person ... in obtaining services which will enhance the ability of the person to care and fend adequately for himself or will protect the person from abuse or neglect."

The Minister, in this instance, is the Minister of Health. However, the range of services required to meet the needs of an adult found to be in need of protection fall within the scope of both the Department of Community Services and the Department of Health. Moreover, changes in government departments and assigned program responsibilities have occurred and may occur in the future. For example, responsibility for nursing homes was transferred to Health from Community Services in 1993. It is important for adults in need of protection to have continued access to government services and programs.

Therefore, it is recommended that both the Ministers of Health and Community Services continue to provide for timely access to services under their jurisdictions for adults in need of protection. This would include care need assessments and access to services in hospitals, homes for special care, and home care.

It is recommended that in the new legislation, accountability for provision of services for adults in need of protection be explicitly assigned to the Ministers of Health and Community Services, while the responsibility for the general administration of the act remain with the Minister of Health.

Question

12. Do you agree that both the Minister of Health and the Minister of Community Services should have accountability for the delivery of services under the *Adult Protection Act*?

Types of Services To Be Supplied

Notes

The act does not provide a list of services that are available to clients of the Adult Protection program other than the following in Section 9(3)(c):

> ... Make an order authorizing the Minister to provide the adult with services, including placement in a facility approved by the Minister, which will enhance the ability of the adult to care and fend adequately for himself or which will protect the adult from abuse or neglect ...

Some jurisdictions provide a listing of available services in their acts. For example, Section 56(4) of the *Adult Guardianship Act* of British Columbia provides a menu of available services:

56(4)In an order under subsection (3)(a), the court must specify the kinds of support and assistance that are to be provided for the adult, including any of the following:

(a) Admission to an available care facility, hospital or other facility for a specified period of up to 6 months;

(b) The provision of available health care;

(c) The provision of available social, recreational, educational, vocational or other similar services;

(d) Supervised residence in a care home, the adult's home or some other person's home, for a specified period of up to 6 months;

(e) The provision, for a specified period of up to 6 months, of available services to ensure that the adult's financial affairs, business or assets are properly managed and protected, including any services that may be offered by the Public Guardian and Trustee.

Notes

The Department is recommending that a list of services similar to those specified by British Columbia be included under regulations in the new legislation. This would include services that are under the current policy and guidelines and that are offered by the Departments of Health and Community Services. The department also recommends that court orders include the care plan or service plan approved by the Minister of Health and/or Community Services.

Question

13. Do you agree that a list of services should be included in the regulations under the *Adult Protection Act?*

Physical Disability and Duress

Notes

Physical Disability

According to Section 3 of the *Adult Protection Act*, an "adult in need of protection" is defined as follows:

> 3(a) An adult who, in the premises where he resides,
>
> (i) is a victim of physical abuse, sexual abuse, mental cruelty or a combination thereof, is incapable of protecting himself therefrom by reason of **physical disability** or mental infirmity, and refuses, delays or is unable to make provision for his protection therefrom, or
>
> (ii) is not receiving adequate care and attention, is incapable of caring adequately for himself by reason of **physical disability** or mental infirmity, and refuses, delays, or is unable to make provision for his adequate care and attention.

Accordingly, if a person has a physical disability and is living at risk, but is competent, the *Adult Protection Act* mandates that the person be assessed. Services, if appropriate, can be offered and refused. However, this suggests that individuals with physical disabilities are not able to make provision for their own needs simply because they are disabled.

Further, the mandatory reporting of an individual who has a physical disability and further intervention by way of gathering confidential information at the intake and assessment phases can be very intrusive. The department recognizes that this provision of the act may be discriminatory and that adults who are physically disabled and competent to make decisions are able to seek assistance without intervention by Adult Protection Services.

The department recommends that physical disability be removed from the definition of an adult in need of protection in the new legislation.

Question

14. Do you agree with physical disability being removed from the *Adult Protection Act?*

Notes

In making the previous recommendation about removing physical disability from the definition of an adult in need of protection, the department is aware that a situation of physical disability may arise that would warrant intervention, at least at the assessment stage. This would include situations where an adult's physical disability is so severe that the person may require services but is unable to seek assistance.

For example, there may be an adult living in the community who is suffering from a condition such as multiple sclerosis and is bedridden and unable to move or even speak. In this event, if it was suspected that this adult was neglected or abused, the department believes it should be able to, at least, assess the situation. If the adult is mentally competent, they may accept or refuse services.

Question

15. Should physical incapacity, as opposed to physical disability, be included in the definition of an adult in need of protection?

Duress

Notes

Under the *Adult Protection Act* a court order can be made if a person is refusing assistance by reason of duress.

The *Adult Protection Act* in Section 3 allows for a person who is mentally competent but has a physical disability not only to be assessed but to be subject to a court application. If shown to be physically disabled and refusing services because of duress (Section 9(3)(b) and Section 10(1)(d), a court order can be granted.

Since 1985, there has been only one case in the province in which a court order was granted where a person has been mentally competent and physically disabled. With the recommendation that physical disability be removed from Section 3(b)(i)(ii) it follows that duress is not required in Sections 9 and 10.

The department recommends that duress be removed from the *Adult Protection Act*.

Question

16. Do you agree with duress being removed from the *Adult Protection Act*?

Notes

Self-Neglect

The Nova Scotia *Adult Protection Act* in Section 3 defines who is an adult in need of protection. The term "self-neglect" is not found in the *Adult Protection Act*, however, Section 3(b)(ii) makes reference to it:

3 In this act,

(b) "adult in need of protection" means an adult who, in the premises where he resides

(ii) is not receiving adequate care and attention, is incapable of caring adequately for himself by reason of physical disability or mental infirmity and refuses, delays or is unable to make provision for his adequate care and attention.

It has been suggested in the Harbison Report[5] that the *Adult Protection Act* should be amended to exclude self-neglect from the definition of "an adult in need of protection." However, more recent legislation, including British Columbia's *Adult Guardianship Act* and Yukon's *Decision Making, Support and Protection to Adults Act*, provide for service to persons living in self-neglect.

Historically in Nova Scotia, approximately 70–75 per cent of adult protection cases involve self-neglect. An example of self-neglect would be that of a person who has been living independently but due to Alzheimer disease is not able to safely live alone. Adult Protection determines the extent of risk to the individual and whether in-home services are appropriate to reduce the risk to an acceptable level. If these services are refused and the level of risk in regard to their safety is high, an application may be made to court. A judge, based on medical information, rules on the mental competency of the individual and whether placement in a safe location (e.g., home for special care) is required.

5. Joan Harbison et al., *Summary Document*, p. 41–43.

Gordon and Verdun-Jones note that intervention by government into the lives of adults who are neglecting themselves may be warranted in certain circumstances.[6]

> In the context of guardianship, an interference with autonomy and self-determination may be justified where there is abundant evidence of the adult's inability to function independently and a real and immediate danger that, because of this inability, they are causing, or will cause, harm to themselves. Where these circumstances exist, (e.g., where a person is failing to eat, living in dangerously insanitary conditions, or neglecting to obtain treatment for seriously infected wounds) benevolent intervention of the least restrictive and intrusive kind may be warranted and can be justified by reference to the *parens patriae* power and duty of the state.

The department is recommending that self-neglect remain in the definition of an adult in need of protection. The department recognizes that people can choose to live at risk in a state of self-neglect. Adult Protection staff become involved only if the person is mentally incompetent and living at an unacceptable level of risk.

The department is further recommending that self-neglect be defined within the act in the following manner:

> Self-neglect means any failure of an adult to take care of himself or herself that causes serious physical or psychological harm.

Questions

17. Should self-neglect remain within the definition of an adult in need of protection?

18. Do you agree with the recommended definition of self-neglect?

6. Gordon and Verdun-Jones, p. 1-29

Notes

Adult Protection in Homes for Special Care

In Nova Scotia, licensed long-term care facilities, governed by the *Homes for Special Care Act*, fall under the jurisdiction of either the Department of Community Services or the Department of Health. These facilities provide various levels and types of care and supervision in homes with four or more beds. The following is a list of homes that fall under the *Homes for Special Care Act*, all of which are licensed and inspected by the province.

Department of Community Services

- residential care facilities
- group homes
- developmental residences
- adult residential centres
- regional rehabilitation centres

Department of Health

- residential care facilities
- nursing homes

All complaints about licensed facilities, including allegations of abuse and neglect, are referred to licensing and inspection staff in the respective departments.

Complaints about abuse or neglect of a resident are viewed as being serious and will result in a thorough investigation, whether the abuser is a staff member, a visitor, or another resident in the facility. By law, a staff member suspected of mistreating a resident is suspended from duty immediately, and corrective steps are taken to ensure that the abuse does not occur again. Police are contacted when appropriate. Ultimately, the inspection and licensing staff can direct a facility to take appropriate measures to ensure that an individual resident is not abused again and that opportunities to enhance functions in the home to help prevent abuse generally are pursued.

Notes

Administratively, Adult Protection jurisdiction in homes for special care would be cumbersome and create duplication of effort, setting up two different administrative structures for addressing allegations of abuse or neglect. This would be further complicated by Adult Protection Services having a role in complaints for only those residents who were not competent.

Adult Protection staff do not necessarily have the expertise to provide direction to homes for special care in cases where abuse/neglect incidents require intervention from a regulatory licensing point of view. Thus, licensing staff would likely be required to be involved in these cases in any event to provide appropriate direction to a facility from a licensing perspective.

Homes for special care strive to provide a safe and caring environment for their residents. While cases of abuse/neglect may occur in these homes, they are the exception. Indeed, in the vast majority of cases where Adult Protection Services must remove a person from their residence for safety reasons, they place the person in a licensed home for special care, as these are deemed places of safety for adults in need of protection.

The department is recommending that Adult Protection Services not investigate complaints of abuse/neglect in licensed facilities. The expectation is that the *Homes for Special Care Act* and Regulations will provide for a safe setting.

Question

19. Should the policy of not applying the *Adult Protection Act* to licensed facilities under the *Homes for Special Care Act* continue?

Notes

Financial Abuse

The Nova Scotia *Adult Protection Act* in Section 3 defines who is an adult in need of protection. Section 3(b)(i),(ii) refers to the adult in need of protection as a person who

> 3(b)(i) is a victim of physical abuse, sexual abuse, mental cruelty or a combination thereof, is incapable of protecting himself therefrom by reason of physical disability or mental infirmity, and refuses, delays or is unable to make provision for his protection therefrom, or
>
> (ii) is not receiving adequate care and attention, is incapable of caring adequately for himself by reason of physical disability of mental infirmity, and refuses, delays or is unable to make provision for his adequate care and attention.

The *Adult Protection Act* does not include financial or material abuse. Operationally, when an intake or referral based only on alleged financial abuse is made, Adult Protection staff question the referral source to see if there are reasonable and probable grounds to suggest that there is physical abuse, sexual abuse, or mental cruelty or if the person is living in a state of neglect. If there is, Adult Protection will do a further assessment and follow-up as appropriate. Where there is suspected financial or material abuse, Adult Protection staff may involve the police and/or the Public Trustee.

There has been ongoing debate on whether financial or material abuse should be included under the *Adult Protection Act*, while others see it as a "family matter." The Harbison report[7] recommends that financial abuse not be included in the *Adult Protection Act* for the following reason:

> Much financial abuse is a crime. In other cases, a solution will be to have some trustworthy family member make a guardianship application, or for the Public Trustee to become involved. These solutions have not always been used, in part because they raise difficult issues. In particular, the potential cost of removing financial abuse is also to remove whatever benefit the

7. Harbison et al., vol. 1, p. 86.

elderly person sees in continuing the relationship with the abuser: those working with the elderly often question whether this is worthwhile. These dilemmas would not be removed, and indeed would be exacerbated, by including financial abuse in the *Adult Protection Act*.

Notes

The department agrees with the above recommendation put forth by the Harbison report on financial abuse/mismanagement. However, where there is physical abuse, sexual abuse, or mental cruelty or where a person is living in a state of self-neglect, the Department of Health is recommending that there is a role for Adult Protection.

The following are examples of possible financial stewardship issues that the Department of Health feels should not be included in the *Adult Protection Act*.

Example 1

A daughter is caring for her 75-year-old mother with dementia in her home. Personal care needs are being addressed, and there is no indication of physical abuse, sexual abuse, or mental cruelty. A relative calls and reports that although the mother is being appropriately cared for, the daughter is keeping her mother's monthly pension cheques.

Example 2

It has been reported that a son is trying to have his elderly father who has Alzheimer disease change his will. Other family members are concerned, as the will contains the father's wishes prior to being diagnosed with dementia. There is no report of physical abuse, sexual abuse, or mental cruelty, and the father's care is not being neglected.

In both of the above examples, if family members have concerns as to possible financial mismanagement, they may apply for a guardianship order under the *Incompetent Persons Act* or contact the police if a criminal code violation is suspected.

Notes

However, in the above examples, if there were allegations of physical abuse, sexual abuse, mental cruelty, or neglect, Adult Protection would investigate. Additionally, if financial abuse were suspected, a referral would be made to the Public Trustee and/or police.

Financial/material abuse has been recognized by the Elder Abuse Awareness and Prevention Strategy Committee of the Senior Citizens' Secretariat as a societal issue. Accordingly, in 2004–05 the committee, as a priority, will be taking action on recommendations aimed at preventing the financial abuse of seniors. This work will study issues involving seniors on a broad basis rather than the more discrete concerns in which Adult Protection is involved.

The department is recommending that the act include financial abuse where there is an allegation of physical abuse, sexual abuse, mental cruelty, neglect, or self-neglect. The role of Adult Protection would be to refer to the police and/or to the Public Trustee to deal with the alleged financial abuse.

Questions

20. Do you agree that financial abuse where there is physical abuse, sexual abuse, mental cruelty, neglect, or self-neglect be included in the legislation?

21. Do you have other suggestions about financial abuse and how it should be dealt with?

Interim Orders and Guardians *ad Litem*

Notes

Interim Orders

The *Adult Protection Act* does not specifically provide for the granting of interim orders when an application that a person is in need of protection is made to the Supreme Court/Family Court. The court is asked to grant an order at the first hearing.

Because of the complex nature of some adult protection cases, it is not always possible to fully cover all the issues at the initial hearing. For example, under Section 10 of the *Adult Protection Act*, the initial hearing must be held within five days after the person is removed from his home. This allows little time for the client to retain counsel or for the Department of Health to develop a plan to assist the adult. The existing legislation in Nova Scotia in Section 10(4) requires the court to "proceed forthwith" to hear the application. With no provision for interim orders, the first hearing must be a full and complete hearing resulting in a final disposition, which may not always best serve the adult.

If the legislation permitted interim orders, then Adult Protection will still be accountable to the court for the removal or planned removal of the adult from his home based on reasonable and probable grounds. If the court is satisfied that the removal is justified and further time is required for a full hearing as to whether or not the adult should be found to be in need of protection, the court would have the authority to adjourn the matter and to grant an interim order. This would authorize Adult Protection to continue to provide for the safety of the adult by authorizing services, subject to time limits, for medical examination or assessment and to appoint a guardian ad litem.

The Department of Health is recommending that the *Adult Protection Act* contain the authority to issue interim orders that are valid for a maximum of 30 days. Further, the department is recommending that before such interim orders are issued the court be required to make a finding that reasonable and probable grounds exist as to the likelihood that the person will be found to be an adult in need of protection.

Question

22. Do you agree that the *Adult Protection Act* contain the authority to issue interim orders for a 30-day period?

Notes

Guardians *ad Litem*

The *Adult Protection Act* is silent on the issue of appointing guardians *ad litem* (litigation guardians). The current Civil Procedure Rules of the Supreme (Rule 6) and Family Courts (Rule 5.05) provide that "persons under disability" (infants and mentally incompetent persons) must defend a proceeding by a guardian *ad litem*. The guardian *ad litem* is paid by and chosen through the Minister of Health. Once appointed, the guardian *ad litem* makes all decisions in the court process for the adult, including whether to accept the services offered by the Minister. The department recognizes that this particular arrangement may create a conflict of interest or an appearance of a conflict. The Harbison Report and a report by the Department of Justice entitled *Adult Guardianship in Nova Scotia*[8] argued the need for guardians *ad litem* to fall within a jurisdiction separate and apart from the Minister of Health.

The department is recommending that the *Adult Protection Act* indicate that a court will appoint a guardian *ad litem* for all Adult Protection court applications. Further, the department is suggesting that a guardian *ad litem* make decisions as much as is reasonably possible that are based on the previously known wishes or values of the adult or on the basis of the expressed wishes of the adult if they are known. The department is not making a specific recommendation with respect to which government department or agency should be responsible for the resourcing and the selection of guardians *ad litem*. Rather, the department is seeking advice on this issue through the consultation process.

Questions

23. Should the *Adult Protection Act* contain specific provisions that allow for the appointment of a guardian *ad litem*, even though the Civil Procedure Rules for the Supreme and Family Courts require the appointment of such guardians *ad litem*?

24. Which government department or agency should have the responsibility for the resourcing and recruiting of guardians *ad litem*?

8. Rene Frigault, *Adult Guardianship in Nova Scotia*, (Halifax: Nova Scotia, Department of Justice,1998), p.17.

Provision of Service under Section 10

Notes

Section 10 of the *Adult Protection Act* is entitled "Removal for Protection" and provides for the immediate removal of a person from their residence to a safe location. In Section 10(1)(a) the person is removed because there are reasonable and probable grounds to believe that among other reasons in 10(1)(b)(c), "the life of the person is in danger."

Section 10 does not allow for the provision of services within the adult's home. The only option is the removal of the adult from their premises. Occasionally, the person is removed from their home (for example, if they are wandering and confused) and taken directly to a licensed care facility as the person does not require medical treatment. When the person requires medical treatment, they are taken directly to a hospital. After appropriate treatment, the person may be able to return to their home with appropriate services. However, the *Adult Protection Act* does not permit this to occur.

The Department of Health recommends including the option to provide services to the adult in need of protection in their home in Section 10, along with the present ability to place a person in a safe location.

Question

25. Do you agree that the *Adult Protection Act* should include making provision for in-home services to the adult in need of protection where appropriate?

Notes

Definitions

The *Adult Protection Act* does not include the definition of terms that are used throughout the legislation. The addition of definitions to the act will enable more effective administration of the legislation.

Gordon and Verdun-Jones argue for clear and standardized definitions:

> Clear and standardized definitions are vitally important both for effective comparative research and, more importantly, the development of intervention strategies, including adult protection or guardianship proceedings. Narrow definitions may result in a failure to assist and protect those in need. Broadly constructed definitions may inadvertently result in the commission of abuse through infringement of an adult's fundamental rights and freedoms by excessive or unnecessary intervention.[9]

Other provinces with adult protection legislation have defined key terms, which provide clarification for those administering the statute. The definitions suggested below reflect several sources with emphasis mainly on those adopted for the most part by Health Canada in *Abuse and Neglect of Older Adults: A Discussion Paper* (2000).[10]

The department recommends the following definitions for inclusion in the *Adult Protection Act:*

Physical Abuse means the use of physical force resulting in pain, discomfort, or injury. It includes behaviours such as slapping, hitting, beating, burning, rough handling, tying up or binding, and force feeding.

Psychological or Emotional Abuse (termed mental cruelty in the present act) means any act that diminishes the identity, dignity, and self-worth of the person or that may provoke intense fear, anxiety, or debilitating stress. It includes acts of confinement and isolation of the person.

9. Gordon and Verdun-Jones, p. 2-2.
10. *Abuse and Neglect of Older Adults: A Discussion Paper* (Ottawa:Health Canada, 2000).

Sexual Abuse means any form of sexual behaviour that is directed toward a person without the person's informed consent, including verbal or suggestive behaviour, fondling, sexual intercourse, pornography, or any act that uses an adult for another's sexual gratification.

Notes

Medication Abuse is the misuse of an adult's medications and/or prescriptions, including withholding medication, over-medication, or not complying with medication instructions.

Neglect means any act or omission whether intentional or unintentional that results in the failure to provide necessary care, assistance, guidance, or attention to an adult who cannot meet these needs on his or her own and causes the adult physical or psychological harm. It includes behaviours such as denial of food, water, clothing, shelter, social contact, personal care and hygiene, medical treatment, and health aids.

Self-neglect means any failure of an adult to take care of himself or herself that causes serious physical or psychological harm.

Questions

26. Do you agree with the substance of the above definitions and should they be included in the legislation?

27. Are there other definitions that you feel should be included in the *Adult Protection Act*?

Notes

Authorization of Medical Procedures

Consent for Medical Procedures

The *Adult Protection Act* does not provide authority for consent for medical procedures. There may be no family member who can give consent and the Public Trustee's ability to provide consent applies to hospitals only and not to homes for special care. The following is an example of the difficulty in obtaining the required medical care for a person in a home for special care.

> A young man under an adult protection order has been placed in a long-term care facility. Dental work is required, because without it a heart condition may be aggravated. For cosmetic reasons, the surgery will boost his self-confidence, and it will improve his speech. As he is not competent, he cannot consent to treatment, and no family members are willing/able to give consent.

Prince Edward Island, in its *Adult Protection Act* in Section 14, allows the following authorization of health care:

> 14. Where a person for whom the Minister has been assigned supervisory responsibility requires health care and is, in the opinion of the Minister and of the attending physician, unable to make judgments required,
>
> (a) if the Minister and the physician believe the proposed care minor, having no more than a routine sort of risk, the Minister may authorize it;

(b) if the Minister and physician believe that the proposed care is serious, such as involving surgery or intensive psychotherapy, and that time and circumstances permit, the Minister shall apply for and the court may issue an order authorizing care;

(c) if the Minister, the physician and one other physician believe that the proposed care is serious and that time and circumstances do not permit application to the court, they may jointly decide on the treatment to be given the person.

Notes

The department is recommending inclusion of health care authorization provisions similar to the Prince Edward Island legislation.

Question

28. Do you agree with the department's recommendation for inclusion of a health care consent provision in the *Adult Protection Act* similar to the one contained in the Prince Edward Island legislation?

Notes

Operational and Procedural Issues

There are a number of operational or procedural items in the *Adult Protection Act* that the department suggests, need review.

Protection of Property

The *Adult Protection Act*, in Section 9 and Section 10, provides for the removal of a person from their residence to a safe location. Under Section 9, an application is made to the court allowing for at least 10 days' notice. Where the life of the person is in danger, Section 10 allows for the immediate removal of the person to a safe location, which most often is to a hospital, if medical assessment/treatment is required, or a licensed care facility.

When a person is removed from their home and there is no one else (e.g., spouse) to secure the residence, Adult Protection staff take reasonable measures to protect the property (e.g., they have police secure and protect the home, if vacant, ensure that the heat is on in winter, and refer to the Public Trustee). Although staff take reasonable measures to secure/protect property, some jurisdictions have the duty enshrined in their legislation. For example, Newfoundland, under the *Neglected Adults Welfare Act*, in Section 10, allows for the protection of the adult's property against loss and damage as follows:

> 10(1) Where an adult is removed from the premises in which he or she is living to another place and it appears to the director that there is danger of loss of, or damage to, movable property of the adult because of the adult's temporary or permanent inability to deal with his or her property, and that no other suitable arrangements have been or are being made for the purpose, it is the director's duty to take reasonable steps to prevent or mitigate the loss or damage.

(2) The director has power at reasonable times to enter premises which immediately before the adult's removal were the adult's place of residence or usual place of residence, and to deal with movable property of the adult in a way which is reasonably necessary to prevent or mitigate loss or damage.

(3) The director may recover from the adult, or from a person liable to maintain him or her, reasonable expenses incurred by the director under subsection (2).

Notes

The department is recommending that a provision similar to Section 10 of the Newfoundland act be included in the *Adult Protection Act* to ensure that the Minister takes reasonable measures to safeguard the person's property, including referral to the Public Trustee.

Question

29. Do you agree that there should be legislated provisions for the Minister to take reasonable steps to prevent loss or damage to the property of an adult in need of protection?

Notes

Referrals to Police

The *Adult Protection Act* in Nova Scotia provides for the protection of vulnerable adults over the age of 16 who are being abused or neglected. When an assessment indicates that a person has been abused or neglected by a caregiver, the act does not place a positive obligation on Adult Protection staff to report the abuse or neglect to the police.

The *Adult Guardianship Act* of British Columbia, in Section 50, makes it mandatory for Adult Protection Services to report possible criminal offences to police:

> If a designated agency has reason to believe that a criminal offence has been committed against an adult about whom a report is made under Section 46, the designated agency must report the facts to the police.

The Nova Scotia *Adult Protection Act* deals with mentally incompetent individuals who are living at risk in society. These adults are vulnerable and in need of protection, as they are unable to seek assistance on their own. The department believes that there is a greater responsibility for Adult Protection, when assisting adults in need of protection, to refer abuse and neglect to police.

The department is recommending that the *Adult Protection Act* contain a positive reporting obligation for Adult Protection staff to report such offences to the police when they have reason to believe that an adult in need of protection has been the victim of abuse or neglect.

Question

30. Do you agree with the department's recommendation regarding the reporting of abuse and neglect?

Recovery of Costs

Notes

Adult Protection Services provides or arranges for services that will protect vulnerable adults in Nova Scotia. These services may be in a person's home or in a safe location such as a nursing home.

When the services required by a person under adult protection are the same as those offered by government to all Nova Scotians, there is no associated cost to that person. However, if a person is assessed as having the ability to pay part or all the associated costs of services such as room and board costs associated with long term care facilities, personal care items, and some health aids to promote independent living (e.g., hearing aid devices), then he or she may not be covered fully through government programs.

Currently there is no mechanism under the *Adult Protection Act* to permit the recovery of costs where the adult in need of protection has the ability to pay.

The Prince Edward Island Adult Protection Act in Section 18 allows for cost recovery:

> The court may in connection with any order authorize or direct that compensation of coverage of costs of services provided to a person be paid from the person's estate.

The department is recommending the inclusion of a cost recovery provision similar to the above in the *Adult Protection Act*. The costs to be recovered would be those costs that all Nova Scotians are expected to pay. Where a person does not have ability to pay for the service, the cost would not be recovered.

Question

31. Do you agree that when adults in need of protection are assessed as having the ability to pay, the cost of services rendered should be recovered, where appropriate?

Notes

Access to Client Information

The Adult Protection Act, in Section 6(b), requires that there be "reasonable and probable grounds to believe an adult is in need of protection" in order for an assessment to take place. Adult Protection staff gather information to determine if there are reasonable and probable grounds, which may include contacting family members, mental health services, the family doctor, etc.

The *Adult Protection Act*, in Section 5, requires the reporting of adults who may be in need of protection but makes no provision for the gathering of information after the referral is made. This has caused some difficulties in the administration of the act.

Yukon's *Decision Making Support and Protection to Adults Act* states a right to information in Section 67.

> 67(1) A designated agency has a right to all the information necessary to enable it to perform its functions under this Act without the consent of the adult or, where applicable, the adult's guardian.
>
> (2) Any person who has custody or control of information that a designated agency is entitled to under subsection (1) must disclose that information to the agency on request.
>
> (3) Subsections (1) and (2) override:
>
> a) any claim of confidentiality or privilege, other than a claim based on solicitor-client privilege; and
>
> b) any restriction in an enactment or the common law about the disclosure of confidentiality of information;

The department is recommending the *Adult Protection Act* include provisions similar to Section 67 of the Yukon's *Decision Making Support and Protection to Adults Act* to enable the Minister to obtain access to information from all necessary sources.

Question

32. Do you support the inclusion of a clause allowing the department to gather information similar to that in the Yukon *Decision Making Support and Protection to Adults Act?*

Confidentiality

Notes

The *Adult Protection Act* does not address the issue of confidentiality. There are two aspects to confidentiality when dealing with an adult protection matter: confidentiality of the client and confidentiality of the person reporting.

Currently, the confidentiality of the client is covered under the *Freedom of Information and Protection of Privacy Act* (FOIPOP), under the "Protection of Personal Privacy" part of the act. These provisions are intended to protect all personal information held by government. However, confidentiality of the person who is reporting is not covered under the *Freedom of Information and Protection of Privacy Act*. Under this act, an individual is entitled to know what has been stated about them and by whom. In the *Adult Protection Act*, if the Minister is proposing mandatory reporting by professionals and voluntary reporting by others, the identities of those reporting need to be protected. The exception would be where reporting is done for malicious reasons as it is in the current act in Section 5(2).

The department is recommending that a provision be included in the *Adult Protection Act* to address the issue of confidentiality for the person who, in good faith, reports that a person may be an adult in need of protection.

Question

33. Do you agree with the confidentiality component that the department is suggesting for inclusion in the *Adult Protection Act?*

Appendix A
Adult Protection Legislation Reporting Provisions

Province/ Legislation	Reporting Provision	Consequence of Not Reporting Provisions
Nova Scotia *Adult Protection Act*	5. (1) Every person who has information, whether or not it is confidential or privileged, indicating that an adult is in need of protection shall report that information to the Minister.	16.(1) Every person who has information, whether or not is it confidential or privileged, indicating that an adult is in need of protection and who fails to report that information to the Minister is guilty of an offence under this Act. 17. Every person who violates this Act or a protective intervention order is guilty of an offence punishable on summary conviction and is liable to a fine of not more than one thousand dollars or to imprisonment for not more than one year, or both.
Newfoundland *Neglected Adults Welfare Act*	4. (1) A person who has information which leads him or her to believe that an adult is a neglected adult shall give the information, together with the name and address of the adult, to the director or to a social worker who shall report the matter to the director.	4. (3) A person who contravenes this section is guilty of an offence. 15.(1) A person who willfully disobeys or obstructs the execution of an order made under the authority of this Act or who contravenes this Act or the regulations made under this Act is guilty of an offence. (2) Where a penalty is not provided for a breach of this Act or a regulation made under this Act, a person committing the breach is liable on summary conviction to a fine not exceeding $200, or in default of payment, to imprisonment for a term not exceeding 2 months, or to both a fine and imprisonment.
Alberta *Protection for Persons in Care Act*	2. (1) Every individual or service provider who has reasonable and probable grounds to believe and believes that there is or has been abuse against a client shall report that abuse to the Minister or a police service or a committee, body or person authorized under another enactment to investigate such an abuse. (2) Subsection (1) applies notwithstanding that the information on which the belief is founded is confidential and its disclosure is prohibited under any other Act. (3) This section does not apply to information that is privileged as a result of a solicitor–client relationship.	2.(4) Notwithstanding and in addition to any other penalty provided by this Act, if the appropriate Minister has reasonable and probable grounds to believe that a person has not complied with subsection (1) and that person is registered under an Act regulating a profession or occupation prescribed in the regulations, the appropriate Minister shall advise the appropriate body of that profession or occupation of the failure to comply. (5) Any person who fails to comply with subsection (1) is guilty of an offence and liable to a fine of not more than $2000 and in default of payment to imprisonment for a term of not more than 6 months.

Continued ...

Province/ Legislation	Reporting Provision	Consequence of Not Reporting Provisions
Manitoba *Vulnerable Persons Living with a Mental Disability Act*	21.(1) A service provider, substitute decision maker or committee who believes on reasonable grounds that the vulnerable person in respect of whom he or she is a service provider, substitute decision maker or committee, is or is likely to be abused or neglected shall immediately report the belief and the information upon which it is based to the executive director.	164.(1) A person is guilty of an offence under this Act who(a) fails, refuses or neglects to report that a vulnerable person is or is likely to be abused or neglected as required under section 21;164(2) A person who is guilty of an offence under subsection (1) is liable on summary conviction (a)in the case of an individual, to a fine of not more than $2000, or imprisonment for a term not more than six months, or both; and (b) in the case of a corporation, to a fine of not more than $5000
Prince Edward Island *Adult Protection Act*	4.(1) Any person who has reasonable grounds for believing that a person is, or is at risk of being, in need of assistance or protection may report the circumstances in such a manner and to such authority or person as may be designated by the Minister.	N/A
British Columbia *Adult Guardianship Act*	46.(a) Anyone who has information indicating that an adult: (a) is abused or neglected, and (b) is unable, for any of the reasons mentioned in section 44, to seek support and assistance,may report the circumstances to a designated agency.	N/A
New Brunswick *Family Services Act*	35.1(1) A professional person may disclose information to the Minister respecting a person whom the professional person has reason to believe is a neglected adult or an abused adult, including information that has been acquired through the discharge of the professional person's duties or within a professional relationship.	N/A

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Neglected Adults Welfare Act, R.S.N.L. 1990, c.N-3.

Protection for Persons in Care Act, R.S.A. 2000, c.P-29.

The Dependent Adults Act, Saskatchewan, Repealed.

Vulnerable Persons Living with a Mental Disability Act, C.C.S.M., c.V90.

Notes

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Adult Protection Act

Discussion Paper—Response Booklet

September 2004

Instructions

This booklet is provided to facilitate your response to the Nova Scotia Department of Health's discussion paper on the *Adult Protection Act*. The purpose and interpretation of the current act are included on page ii of this document to help you in this process.

Please clearly indicate your response in the space provided. An opportunity to include additional comments is provided at the end of the response booklet.

Your comments and suggestions are important and will be reviewed by the Department of Health and used to help improve adult protection legislation.

The deadline for submissions is **October15, 2004**.

Responses should be forwarded to the department:

By mail: Provincial Coordinator
Adult Protection Services
Continuing Care Branch
Department of Health
P. O. Box 488, Halifax, Nova Scotia B3J 2R8

By fax: (902) 424-0558

By e-mail: *apact@gov.ns.ca*

The Discussion Paper and the Response Booklet can also be accessed through the Department of Health's website at *www.gov.ns.ca/health*.

Thank you for your comments and interest in the protection of vulnerable adult Nova Scotians.

Adult Protection Act

Purpose of Act

2 The purpose of this Act is to provide a means whereby adults who lack the ability to care and fend adequately for themselves can be protected from abuse and neglect by providing them with access to services which will enhance their ability to care and fend for themselves or which will protect them from abuse or neglect.

Interpretation

3 In this Act,

(a) "adult" means a person who is or is apparently sixteen years of age or older;

(b) "adult in need of protection" means an adult who, in the premises where he resides,

(i) is a victim of physical abuse, sexual abuse, mental cruelty or a combination thereof, is incapable of protecting himself therefrom by reason of physical disability or mental infirmity, and refuses, delays or is unable to make provision for his protection therefrom, or

(ii) is not receiving adequate care and attention, is incapable of caring adequately for himself by reason of physical disability or mental infirmity, and refuses, delays or is unable to make provision for his adequate care and attention;

Nova Scotia's *Adult Protection Act*, in its entirety, can be viewed at *www.gov.ns.ca/legi/legc*, under consolidated public statutes.

Guiding Principles

1. Do you agree that guiding principles should be included in the *Adult Protection Act?* (p. 4) YES ☐ NO ☐

Comments:

2. Do you agree with the recommended guiding principles? (p. 4) YES ☐ NO ☐

Comments:

3. Are there other principles that you would like to see included? (p. 4) YES ☐ NO ☐

Comments:

Competency

4. Do you agree with the suggestion of the department to adopt the Saskatchewan definition of mental incompetence? (p.7) YES ☐ NO ☐

Comments:

5. Is there some other definition of mental incompetence that you would like to suggest? (p.7) YES ☐ NO ☐

Comments:

6. Do you agree with the inclusion of a section in the *Adult Protection Act* similar to Section 37.3 of the New Brunswick Act? (p. 10) YES ☐ NO ☐

Comments:

7. Do you have an alternative wording to Section 37.3 of the New Brunswick Act that you would suggest for inclusion in the *Adult Protection Act*? (p. 10) YES ☐ NO ☐

Comments:

8. Should a standardized instrument or tool for assessing competency be included in regulations under the act? (p. 10) YES ☐ NO ☐

Comments:

9. Should two independent medical practitioners (one of whom is a psychiatrist or a geriatric specialist) be required to complete the adult protection assessment? (p. 10) YES ☐ NO ☐

Comments:

Models of Reporting: Mandatory and Voluntary

10. Do you think that Nova Scotia should continue with mandatory reporting for all persons in the *Adult Protection Act*? (p.13) YES ☐ NO ☐

Comments:

11. (a) Do you agree with the recommendation for mandatory reporting by professionals and voluntary reporting for the rest of society? (p.13) YES ☐ NO ☐

Comments:

(b) If reporting for professionals is mandatory, who should be included in the list of professionals? (E.g., police, clergy, physicians, nurses, social workers, psychologists) (p.13)

Comments:

Services

12. Do you agree that both the Minister of Health and the Minister of Community Services should have accountability for the delivery of services under the *Adult Protection Act?* (p.14) YES ☐ NO ☐

Comments:

13. Do you agree that a list of services should be included in the regulations under the *Adult Protection Act? (*p. 16) YES ☐ NO ☐

Comments:

Physical Disability and Duress

14. Do you agree with physical disability being removed from the *Adult Protection Act?* (p. 17) YES ☐ NO ☐

Comments:

15. Should physical incapacity, as opposed to physical disability, be included in the definition of an adult in need of protection? (p. 18) YES ☐ NO ☐

Comments:

16. Do you agree with duress being removed from the *Adult Protection Act*? (p. 19) YES ☐ NO ☐

Comments:

Self-Neglect

17: Should self-neglect remain within the definition of an adult in need of protection? (p. 21) YES ☐ NO ☐

Comments:

18: Do you agree with the recommended definition of self-neglect? (p. 21) YES ☐ NO ☐

Comments:

Adult Protection in Homes for Special Care

19. Should the policy of not applying the *Adult Protection Act* to licensed facilities under the *Homes for Special Care Act* continue? (p. 23) YES ☐ NO ☐

Comments:

Financial Abuse

20. Do you agree that financial abuse where there is physical abuse, sexual abuse, mental cruelty, neglect, or self-neglect be included in the legislation? (p. 26) YES ☐ NO ☐

Comments:

21. Do you have other suggestions about financial abuse and how it should be dealt with? (p. 26) YES ☐ NO ☐

Comments:

Interim Orders and Guardians *ad Litem*

22. Do you agree that the *Adult Protection Act* contain the authority to issue interim orders for a 30-day period? (p. 27) YES ☐ NO ☐

Comments:

23. Should the *Adult Protection Act* contain specific provisions that allow for the appointment of a guardian *ad litem*, even though the Civil Procedure Rules for the Supreme and Family Courts require the appointment of such guardians *ad litem*? (p. 28) YES ☐ NO ☐

Comments:

24. Which government department or agency should have the responsibility for the resourcing and recruiting of guardians *ad litem*? (p. 28)

Comments:

25. Do you agree that the *Adult Protection Act* should include making provision for in-home services to the adult in need of protection where appropriate? (p. 29) YES ☐ NO ☐

Comments:

Definitions

26. Do you agree with the substance of the above definitions and should they be included in the legislation? (p. 31) YES ☐ NO ☐

Comments:

27. Are there other definitions that you feel should be included in the *Adult Protection Act*? (p. 31) YES ☐ NO ☐

Comments:

Authorization of Medical Procedures

28. Do you agree with the department's recommendation for inclusion of a health care consent provision in the *Adult Protection Act* similar to the one contained in the Prince Edward Island legislation? (p. 33) YES ☐ NO ☐

Comments:

Operational and Procedural Issues

29. Do you agree that there should be legislated provisions for the Minister to take reasonable steps to prevent loss or damage to the property of an adult in need of protection? (p. 35) YES ☐ NO ☐

Comments:

30. Do you agree with the department's recommendation regarding the reporting of abuse and neglect? (p. 36) YES ☐ NO ☐

Comments:

31. Do you agree that when adults in need of protection are assessed as having the ability to pay, the cost of services rendered should be recovered, where appropriate? (p. 37) YES ☐ NO ☐

Comments:

32. Do you support the inclusion of a clause allowing the department to gather information similar to that in the Yukon *Decision Making Support and Protection to Adults Act?* (p. 38) YES ☐ NO ☐

Comments:

Confidentiality

33. Do you agree with the confidentiality component that the department is suggesting for inclusion in the *Adult Protection Act?* (p. 39) YES ☐ NO ☐

Comments:

Additional Comments

Comments:

Additional Comments

Comments:

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